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In the Matter of

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Access Charge Reform

CC Docket No. 96-262

ADDITIONAL COMMENTS OF THE
RURAL INDEPENDENT COMPETITIVE ALLIANCE

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Rural Independent Competitive Alliance
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SUMMARY

After the passage of the Telecommunications Act of 1996, many small incumbent local exchange carriers have competitive local exchange carrier ("CLEC") subsidiaries, such as Rural Independent Competitive Alliance ("RICA") members, to extend their reliable, efficient and modern telecommunications services to neighboring small towns and rural communities. However, the ability of these rural CLECs to continue to provide modern, reliable and efficient telecommunications services to rural communities and to expand their services to other communities is being severely jeopardized by IXC's refusing to pay for access services and by their instructing CLECs to cease sending and accepting long distance traffic. To ensure that rural CLECs are able to survive and grow, a benchmark approach to CLEC access rates that presumes rates at or below the average NECA rate to be just and reasonable is urgently needed.

Accordingly, RICA proposes that the Commission adopt a rural exemption that provides for a separate benchmark for rural CLECs that is reflective of the higher costs that they incur. Such a rural exemption would apply only when a CLEC is serving a population of less than 20,000 and only "to the extent that" the rural CLEC meets the population definition. The 20,000 population limitation allows the exemption to apply to the somewhat larger populated rural areas that have been traditionally poorly served by the large ILEC but excludes CLECs located in major urban areas from receiving the exemption. Although RICA's original proposal provided an alternative exemption for CLECs serving fewer than 50,000 access lines, RICA has now determined that such a limit would permit the classification as rural the service offerings of a small CLEC located in a major urban area and therefore now opposes the imposition of a percent limit of access lines.

RICA's proposal is administratively straightforward. It does not require ETC status, does not require difficult density determinations, would not be tied to the volume of access traffic or be tied to the number or type of a CLEC's customers. Further, the exemption is not overinclusive or underinclusive as would be Sprint's proposed MSA test. RICA does agree with Sprint's proposal, however, that in order to qualify for the exemption, a CLEC could not limit its service to business customers and that the average NECA rate is a reasonable rate.

Such an exemption, as proposed by RICA, would provide for an administratively straightforward way to establish a presumption of reasonableness for interstate access rates for CLECs that provide quality service to rural America. Accordingly, modern, reliable and efficient telecommunications services would continue to be provided to rural customers as well as expanded to other rural areas, thus serving the public interest. RICA therefore urges the Commission to act promptly in adopting its proposed exemption.

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The Rural Independent Competitive Alliance (“RICA”) files these additional comments in response to the Common Carrier Bureau’s request that parties provide further information in regard to a “rural exemption” applicable to a potential benchmark level of interstate access charges which would be presumed just and reasonable.¹ RICA’s comments demonstrate the public interest benefits which would be expected from such a rural exemption and recommend that it be defined essentially in accordance with RICA’s previous proposal.²

A. Rural CLECs Provide Significant Public Benefit By Offering Substantially Improved Telecommunications Services to Previously Underserved Rural Areas

² Letter from David Cosson to Dorothy Attwood, Chief, Common Carrier Bureau, August 4, 2000.

After the passage of the Telecommunications Act of 1996, many small incumbent local exchange carriers (“ILECs”) created competitive local exchange carrier (“CLEC”) subsidiaries, such as RICA members, to extend their reliable, efficient and modern telecommunications services to neighboring small towns and rural communities that heretofore had received only minimal telephone service from large ILEC holding companies. In many cases, the rural CLECs had to construct new facilities since resale or unbundled network elements of the large ILEC’s technologically obsolete outside plant and switching facilities would not allow the rural CLECs to offer the improved grades and quality of service demanded by the communities.

This overbuilding has required substantial investment. According to data compiled from a recent survey, twenty-three RICA members collectively spent over \$140 million (an average capital investment of \$6.6 million) in their CLEC areas.³ This investment has led to improved service in rural America including providing access to for the first time to such services as caller ID, voice mail, DSL, local customer service offices and job opportunities.⁴

³ At the time of the survey, the twenty-three respondents served a total of 27,923 residential and 11,957 business access lines with the potential to serve an exponentially higher amount of customers in the seventy three different markets that are covered by these RICA members.

⁴ According to the survey, 40 percent of the respondents had brought Caller ID to rural markets for the first time; 65 percent had brought voice mail; and 83 percent had brought DSL. The survey also revealed that 73 percent of the respondents have opened a local customer service office in the markets they are serving. The average penetration rate for the twenty-three respondents is 53.81 percent. Seven of the respondents who have been in business for more than 3 years reported an average penetration rate of 72.14 percent.

B. The Benefits of Competitive Local Service in Rural Areas Are Severely Threatened by Certain IXC's Illegal Refusal to Pay the Lawful Access Charges of Rural CLECs.

From these statistics, it appears that Congress' and the Commission's goals of bringing modern telecommunications services to rural America are being advanced. However, the ability of rural CLECs to continue to provide these services and to expand into new territories is being threatened by the illegal "self-help" actions of AT&T and Sprint.

AT&T has inflicted irreparable harm to several rural CLECs by refusing to pay for access services provided to AT&T.⁵ Additionally, AT&T has affected the ability of rural CLECs to compete against the large ILEC by instructing certain rural CLECs to cease sending it originating traffic and to cease presubscribing customers to AT&T. Other CLECs have been told in addition not to accept terminating traffic from AT&T.⁶

Sprint has also inflicted irreparable harm by refusing to pay access charges in excess of the

⁵ As of February 2000, AT&T owed a total of \$509,769.47 to five RICA members for switched access charges. *See* Attachment 6 of Request for Emergency Relief filed by RICA, et. al. filed on February 18, 2000 (letter to Peter H. Jacoby, Esq. of AT&T from David Cosson dated November 19, 1999 - CLEC Access Charge Payment Demand Details). The total amount owed to the five RICA members as of this date is more than double this amount (at the end of last year, the amount owed to the five was approximately \$1.1 million). The total amount owed to all RICA members is much higher as other RICA members have not been paid for access charges from AT&T. *See, e.g.*, FCC August 8, 2000 Meeting *Ex Parte* Summary (attached letter to Karen Zimmerman of Cumby Telephone Cooperative, Inc. from William J. Taggart III of AT&T dated July 12, 2000 informing Cumby that AT&T will not pay for invoiced access service charges).

⁶ In seeking to preserve competitive alternatives for rural subscribers and to halt AT&T's multiple violations of the Communications Act, on February 18, 2000, RICA filed its Request for Emergency Relief. Almost a year later, the Commission has yet to act on RICA's emergency petition.

ILEC serving the same area.⁷ Sprint has attempted to justify its refusal to pay by labeling rural CLECs' access charges as "patently excessive" and by stating that the FCC has indicated in its rulings that ILEC charges are the appropriate benchmark for use by rural CLECs. This mischaracterization of the Commission's statements was grossly egregious given that the reference to the FCC's previous rulings were made subsequent to the Commission's clarification, that the Commission has never held that any access rate greater than that charged by an ILEC is necessarily unjust and unreasonable.⁸

These "self-help" actions on the part of AT&T and Sprint are causing irreparable harm to rural CLECs and their customers by affecting the ability of rural CLECs to continue to stay in business and discouraging new entrants as they consider entering into the marketplace. Accordingly, the provision of quality telecommunications services and access to broadband services which are unavailable from the incumbents is jeopardized and the public interest has been violated.

II. BENCHMARK ACCESS RATES FOR RURAL CLECS SHOULD BE ADOPTED

A. A Benchmark Approach For Rural CLEC Access Rates is an Effective Means to Eliminate Excuses For Illegal "Self-Help"

In order to eliminate the reasons given by the interexchange carriers ("IXCs") for using "self-help," a benchmark approach is urgently needed. A benchmark approach would ensure that

⁷ In a letter to a RICA member dated September 29, 2000, Sprint sought to coerce the rural CLEC into an agreement to charge no more than the ILEC by sending a check for partial payment and stating that acceptance of the partial payment constituted "your agreement to provide service at the rate paid by Sprint."

⁸ See *Sprint Communications Company, LP v. MCG Communications, Inc.*, Memorandum Opinion and Order, File No. EB-00-MD-002, FCC 00-206 (rel. June 9, 2000).

IXCs pay a tariffed, or otherwise established, rate and ensure that the IXC could not discontinue or impair service without obtaining 214 certification. If the access rates were below the benchmark, it would be presumed reasonable; however, the rates still could be challenged in a complaint brought under Section 208.

B. Rural and Urban Benchmarks Must be Different

Costs for rural CLECs are typically higher on a per-unit basis than incumbent access rates because the costs are spread over a smaller customer base with much lower average density and lower business to residence ratio.⁹ As discussed above, rural CLECs also have higher costs due to the significant investment they have made in modern plant and facilities which have not been made by the large ILEC serving the rural area. Further, if the Commission were to adopt one benchmark that is an average of CLEC rates in both urban and rural areas, rural CLECs would not be fairly represented in the average.¹⁰ Accordingly, a separate benchmark is appropriate for

⁹ It has long been recognized by Congress and the Commission that costs for serving rural areas exceed those for serving urban areas. *See, e.g., Telecommunications Act of 1996 Conference Report*, 104th Congress, 2nd Session, Report 104-230, p. 132 (Feb. 1, 1996) (“[n]ew section 254(g) is intended to incorporate the policies of geographic rate averaging and rate integration of interexchange services in order to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers”); *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended: Report and Order*, 11 FCC Rcd 9564, 9567 (1996) (FCC citing its “long and well-established policy” of supporting geographic rate averaging and referencing the “disproportionate burdens that may be associated with common line recovery costs” in rural areas).

¹⁰ *See* Comments filed in the Commission’s Access Charge Reform proceeding on October 29, 1999, in which commenters recognize that the majority of CLECs serve urban areas: Sprint at 20 (“[n]early all CLECs offer their services not in the rural areas served by these ILECs, but rather in high-density metropolitan areas”); CTSI’s Comments at 11 (many “smaller” markets served by CLECs are urban markets and thus not reflective of the “really small” rural markets).

rural CLECs that is reflective of the higher costs that they incur.¹¹

C. RICA's Proposed Rural Benchmark Is Appropriate and Administratively Straightforward

On August 4, 2000, RICA proposed to define a Rural CLEC as:

a local exchange carrier that provides telephone exchange and other telecommunications services that are an alternative to the telephone exchange and other services offered by the incumbent local exchange carrier to the extent that such rural CLEC

- A. provides telephone exchange and other telecommunications services to any area that does not include either
(1) any incorporated place of 20,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of Census; or
(2) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of Census as of August 10, 1993; or
- B. provides telephone exchange service, including exchange access, to fewer than 50,000 access lines.¹²

This proposed definition does not seek to apply the definition set forth in the Communications Act of 1934, as amended (the "Act") of a Rural Telephone Company to Rural CLEC rate benchmark eligibility, but does follow the structure of the first and second alternative

¹¹ See *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968) ("*Permian Basin*"). In this Supreme Court case, the Court ruled that the Federal Power Commission's creation of exemptions for smaller natural gas producers, which released them from having to make certain adjustments in price and from various filing and reporting obligations, was within its statutory authority. The Court found that the contribution of small natural gas producers to the search for new gas reserves was "made at correspondingly greater financial risks and at higher unit costs" and noted that "carefully selected special arrangements for small producers would not improperly increase consumer prices." *Id.* at 785-87.

¹² August 4, 2000 *Ex Parte* Letter from David Cosson to Dorothy Attwood.

definitions of a Rural Telephone Company at Sections 3(37)(A) and (B) of the Act.¹³ The population limit in the RICA proposal is increased from 10,000 used in subsection (A) to 20,000 to include the somewhat larger populated rural areas that have been traditionally poorly served by the large ILEC and are now have alternative improved service from the rural CLEC. Nevertheless, the 20,000 population limit is a conservative figure which will limit the availability of the rural exemption to some RICA members and other rural CLECs affiliated with rural ILECs.

The RICA proposal includes a provision taken from Section 3(37)(B) which would provide an alternative eligibility for CLECs with less than 50,000 access lines. RICA recognizes, however, that historically this provision was established to categorize rural ILECs which are a mature industry and that application of this definition to rural CLECs could classify as rural the service offerings of a small CLEC located in a major urban area. On further consideration, therefore, RICA withdraws this alternative from its proposal.

Rather than impose a percent limit of access lines in larger communities as is done in section 3(37)(D), RICA proposed that the rural definition apply “to the extent that” a rural CLEC meets the population definition. The proposal was made in the context of establishing a presumption of reasonableness for rates for interstate access at or below a benchmark. Thus, “to the extent” that a rural CLEC provides access service to subscribers in areas not meeting the test, for example in a city of 25,000 population, the access rates charged there would not be eligible for the rural presumption of reasonableness.

¹³ See 47 U.S.C. § 153(37). There is, however, nothing in the Act which would preclude a CLEC from showing that it meets the definition of a Rural Telephone Company, except that the alternative qualification of subsection (C) would probably not apply because CLECs do not have study areas.

RICA's proposed definition does not require ETC status to be obtained in order to receive the rural exemption.

D. Comments on the Sprint Proposal

In its October 11, 2000 *Ex Parte* letter, Sprint proposed certain guidelines to be followed in order for CLECs to qualify for a rural exemption. RICA agrees with two of the guidelines: (1) that in order to qualify as a rural CLEC, the CLEC would have to make its services available to all customers in its service area and not limit service to business customers and (2) that the average NECA rate is a reasonable rate.¹⁴ It should be noted that the average NECA rate is not the revenue level received by the ILECs in the NECA pool. Thus rural CLECs with costs above the NECA average rate will receive less, and sometimes substantially less, revenue than a similarly situated rural ILEC because the NECA rates are based on the average cost of all pool members.

Should the Commission adopt "access reform" regulations which shift a substantial portion of the NECA pool members costs from access to a CALLS-like universal service support mechanism under Section 254, this disparity could be severely extended. In such an event, RICA believes that the benchmark should continue to be set at the level of the average NECA rate plus the amount received by the average NECA member through such support mechanism.¹⁵

However, RICA opposes other aspects of Sprint's proposed guidelines. Sprint's proposal for a rural exemption which would define rural areas as those outside of MSAs, but with several

¹⁴ According to the survey of twenty-three RICA members referenced above, over seventy percent state that their access rates are the same as NECA access charges.

¹⁵ This would be calculated by dividing the total support to NECA members by the number of access minutes.

restrictions, would encompass more areas than the RICA proposal, but would also exclude some areas which should be included. Sprint would restrict the exemption to CLECs which operate only in such rural areas. Such a restriction is unnecessary provided, as RICA has proposed above, that the exemption is only available for access provided in the qualifying areas.

RICA also opposes Sprint's suggestion that the competing ILEC would have to operate in both rural and non-rural areas of the state. There is no apparent justification for this restriction. One reason, although not the only reason, rural CLEC costs are higher than the ILECs, is because the ILEC typically has rates averaged over most of a state, and has the majority of its lines in lower cost urban areas. Where an ILEC operates only in rural areas, its costs may well be closer to those of the CLEC, if its investment is of a comparable vintage. In such cases the rural exemption is not needed. Such cases are very rare however, because rural CLECs are typically only viable where the ILEC is a non-rural company which has long neglected the area in question. Rural ILECs generally have quality service and satisfied customers. There are few if any non-rural ILECs serving only rural areas.

One could argue that when the rates of the ILEC, serving the same territory as the CLEC, are deaveraged, the disparities may become less and thus eliminate the need for a rural exemption. However, until deaveraging takes place, it is not known in what areas the disparities may be nominal and in what areas a rural exemption may be needed. When such deaveraging takes place in a manner that closely matches rates to costs in the particular area, a rural exemption based upon the average NECA rate may no longer be necessary.

E. The Alternatives Described in the Public Notice Do Not Balance Accuracy With Ease of Administration As Well as The RICA Proposal

The Bureau's Public Notice asked for comment on several alternatives means of defining a "rural exemption."¹⁶ RICA's response to each of these suggestions or questions are set forth below. In evaluating the merits of these alternatives, RICA suggests that the Commission must balance the need for accuracy in determining which areas have higher costs of service with the susceptibility of the test adopted to be applied in a uniform manner with a minimum of litigation.

1. Should any exemption apply to all areas that fall outside of MSAs?

As explained above, RICA believes the MSA test would prove to be both over and under-inclusive. On the one hand, it would include many areas with cities up to 50,000 population and thus more areas than the RICA proposal. On the other hand, it would exclude from the rural definition some genuinely high cost areas which are without substantial population concentrations, but happen to be in counties adjacent to urban areas.

2. Should the rural exemption turn on the overall population density within a particular CLEC's service area, or on the density of the CLEC's customers within its service area?

RICA suggests that whatever standard is adopted must be based on readily determined third party information, preferably from the Census Bureau. All standards which rely on density calculations are inherently subject to dispute, both as to the method of measurement as well as the measurement of any given situation.¹⁷ There are also timing questions in that as a rural CLEC

¹⁶ Public Notice at 2.

¹⁷ During the period when the telephone cable cross ownership rules had a density requirement that must be met in order to receive a waiver of the cross ownership rules, the administrative burden placed upon carriers and the Commission and the disputes as to actual household density resulted in significant delay and denial of service. *See In the Matter of Elimination of the Telephone Company - Cable Television Cross-Ownership Rules, Sections 63.54-63.56, for Rural Areas: Report and Order*, 88 FCC 2d 564, 571-73 (1981) ("Cable/Telco

builds it system, its density will usually decrease, but it needs to know its regulatory status at the start of its construction period. Measuring population density for service area will often be difficult because neither the area nor the population of the service area will match the census area boundaries. If density were measured by customers, these problems would be compounded, the answer would change on a daily basis, and the result would not reflect that the cost of construction of a network are more a function of the density of homes passed than homes served.¹⁸ For these reasons, RICA believes that its population sized based rule is superior to a density based rule.

3. Should the rural exemption be tied to the presence of a town of a certain population in the CLEC service area or within a given distance from the service area?

The RICA proposal adopts this approach on the basis that below the 20,000 population level, a lack of “critical mass” and low cost/high volume customers are reasonably to be expected. It is also a measurement of the areas least attractive to the majority of the CLEC industry which is not affiliated with rural ILECs. As a result, the total number of access lines qualified, and thus the

Order”) (FCC noting that even after it refined its waiver requirement by adopting a rebuttable presumption that independent cable operation is not economically feasible in areas having a density of fewer than thirty households per cable route mile, the Commission did not see “rapid or significant penetration into rural areas by independent cable operators,” lamented that “its costs to the general public have far exceeded its benefits” and recognized that “we have seen a number of disputes as to actual household density”); *see also Cable/Telco Order* at 572 n.21 (FCC noting that the elimination of the density rules in rural areas will permit the “reallocation of at least two workyears time annually” for the Commission).

¹⁸ This fact was recognized in the cable/telco rural exemption. *See Cable/Telco Order* at 573 (FCC determining that determining density is “administratively impractical” since it requires engineering studies and surveying techniques and, “[e]ven then, the results are not irrefutable”).

traffic billed at the “rural exemption” rate will be *de minimus* in so far as the IXC’s are concerned. Whether or not there is a larger town outside the service territory should be irrelevant to the costs of providing service. As described in Section II.C.1, above, the rural exemption proposed by RICA applies “to the extent” a CLEC’s territory does not contain a town over 20,000 population. Thus, where a CLEC extends its service into an area of larger population, the access lines in that area would not be included in the rural exemption.

4. Should a CLEC be required to qualify for and receive high-cost or rural universal service support before it could avail itself of such a rural exemption?

Neither eligibility for nor receipt of universal service support should be a criteria for qualification for the rural exemption. Most RICA member rural CLECs are competing in areas served by non-Rural ILECs. Universal service support for any particular line served by the CLEC is, by operation of Section 54.307, equal to the support received for that line by the ILEC.¹⁹ Although the area served by the CLEC may actually be a high cost to serve area, the non-rural ILEC may receive no support for the lines because the state average cost is low, or because the cascade process allocated its support to higher cost exchanges. Because the ETC designation process involves expense and delay, rural CLECs will generally not request designation if there is no support available.

5. How should the rural exemption apply where a CLEC service area includes areas of markedly different densities?

The general presumption of the rural exemption would be that in non-urban areas, rural CLEC overall costs are more similar to that of the NECA member average than of the non-rural

¹⁹ 47 C.F.R. §54.307

ILEC with which it competes. Variations in density within this area do not necessarily rebut the presumption and in any event, as discussed above, the regulatory cost of getting to the more accurate answer will usually exceed any benefits to society. Nevertheless, the rural exemption is proposed as a presumption, but not a conclusion. IXCs will retain the right to show in a Section 208 proceeding that the rates of the CLEC violate Sections 201(b) or 202(a). The purpose of the rural exemption is to narrow the number of instances in which there are genuine issues of unreasonable rates in order to encourage improvement in historically underserved rural areas, and to minimize regulatory burdens on all parties, including the Commission.

6. Is it possible for a CLEC to charge different access rates within a single service area depending of the population density surrounding particular end users?

For the reasons set out in 5, above such density measures are not feasible and will inevitably lead to protracted, but ultimately meaningless litigation and expense far in excess of any presumed benefits. However, it is feasible to have different access rates for the portion of the CLEC service area which meets the definition of rural area used in the RICA proposal, and that which does not.

7. Should the availability of a rural exemption be determined by the actual location of a CLEC's customers, or by the location of the CLEC switch, or some other portion of its network?

The location of the customer should be the determining factor in applying the proposed rural exemption. CLECs should be free to locate the switch based on the most cost efficient design. For rural CLECs, this may often mean constructing overbuild outside plant and connecting to the switch of its affiliated ILEC, the result of which is to minimize the switching costs for both the ILEC and the CLEC, thereby reducing the access charges IXCs pay to the

ILEC.

8. Should the rural exemption be tied to the volume of access traffic generated by a CLEC's customers?

As discussed above, there may be instances where a CLEC operates in an area qualifying for the rural exemption, but, in fact, has unit costs substantially below that which the average NECA ILEC experiences, because of a dominant high volume customer, or some other reasons. Such cases are not common, but could occur. The solution for such cases is not to create a complex and unworkable test for rural exemption, but to recognize that the presumption is not conclusive and that regardless of any rural benchmark, the CLEC remains subject to a Section 208 complaint by the IXC if its rates are unreasonable.

9. Should the rural exemption be tied to the number or type of a CLEC's customers?

The RICA proposal contains an inherent limitation on the total number of customers which could come under a rural exemption, in that only small percentage of the population lives in the defined areas.²⁰ Moreover, the type of customers will tend to be dictated by the demographics of the area served. RICA does agree that the rural exemption should only be available to CLECs who serve both business and residential customers and that service areas should not be gerrymandered to business only areas.

²⁰ To qualify for exemption under the RICA proposal, CLECs must provide service to any area that does not include either "(1) any incorporated place of 20,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of Census; or (2) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of Census as of August 10, 1993."

III. RICA MEMBER RATES ARE NEITHER UNREASONABLE NOR BURDENSOME

A. RICA member Rates are Not Unreasonable

Throughout this proceeding various parties have contended that CLEC rates are unreasonable because they exceed those of the ILEC. These contentions have persisted despite the Commission's express rejection of claims that such differences established that the rates were unreasonable.²¹ It is noteworthy that none of these claims have shown, or even attempted to show that the rates of rural CLECs were unreasonable in relation to the cost of providing service, which the Commission has repeatedly found to be the cornerstone of rate determinations.²² RICA members generally have priced their access service as essentially the same level as their affiliated ILEC, although as non-participants in the NECA pools, they often recover less revenue. Because their operating areas are usually adjacent to the rural ILEC using NECA rates, the cost characteristics are quite similar, although the newer, less depreciated outside plant of the CLEC may be somewhat higher cost. In these circumstances, a benchmark based on the average NECA rates is a reasonable approach which avoids considerable expense for all involved as well as the necessity of developing a prescribing accounting, separations and tariff element rules for CLECs.²³

²¹ See, *Sprint Communications Company, L.P. v. MGC Communications, Inc., Memorandum Opinion and Order*, File No. EB-00-MD-002, FCC 00-206, Jun. 9, 2000. ("We decline Sprint's invitation to hold that any access rate that is higher than the ILEC's is necessarily unjust and unreasonable under section 201(b). Nothing in the Commission's existing rules or orders supports Sprint's legal position.").

²² See, e.g., *In the Matter of Separation of costs of regulated telephone service from costs of nonregulated activities: Report and Order*, 2 FCC Rcd 1298, 1312-13 (1987), *on recons.*, 2 FCC Rcd 6283 (1987); *on further recons.*, 3 FCC Rcd 6701 (1988).

²³ Although the benchmark would clearly not be rate prescription, the Supreme Court has recognized the legitimacy of setting rates based on costs of other providers in the same area.

The contention that CLEC rate levels are substantially above ILEC rates was originated by AT&T in its Declaratory Ruling request.²⁴ Responses to that request, and in the subsequent ruling established that there were serious questions as to the accuracy of AT&T's rate comparisons, including its apparent failure to compare fairly usage only charges of CLECs with usage plus PICC charges of ILECs. As the Bureau's Public Notice notes correctly however, that the CALLS Order has eliminated PICC charges for residential and single line business customers. It is important therefore that the Commission not rely on rate disparity comparisons from the pre-CALLS time frame. As to post-CALLS comparisons, some \$650 million have been shifted from access to universal service support. Because IXC's still pay a substantial portion of that amount through universal service contributions, a fair comparison will require an appropriate recognition of that fact.

B. RICA member rates do not "place a measurable and significant burden on the long distance market."

Whatever disparities are eventually determined by "apples to apples" rate comparisons the fact that one carrier has higher rates than another does not, per se, make the latter's rates unreasonable, when its rates are based on cost. The Public Notice raises the question, however, as to whether CLECs generate enough traffic so that their higher rates place a "measurable and

See Permian Basin, 390 U.S. at 768, 774 (Supreme Court considering whether the Federal Power Commission may regulate natural gas producers' interstate sales in the Permian Basin Area by the prescription of maximum area rates and finding "no constitutional infirmity in the Commission's adoption of an area maximum rate system").

²⁴ Petition for Declaratory Ruling filed by AT&T Regarding Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers (Oct. 23, 1998)

significant burden on the long distance market.” Assuming, *arguendo*, that a reasonable rate can nevertheless be burdensome, as RICA has previously demonstrated, the impact on AT&T’s rates of payments to rural CLECs at a higher rate than the ILECs charge is lost in the rounding.

RICA pointed out that the Bureau was unconvinced by AT&T’s similar objection to a transfer of 214,000 lines from GTE to Century, which had a similar effect of raising access charges to AT&T, where the increase would amount to \$.00000227 per minute. Although RICA members and other rural CLECs currently serve less than 100,000 lines in aggregate, if the Century burden calculation is applied to that number of lines, AT&T would be required to bear another \$.00000114 per minute.²⁵ This impact, in the context of substantial limits on the potential for growth could be off by a substantial amount and still be de minimus.

IV. CONCLUSION

The ability of CLECs to continue to provide modern, reliable and efficient telecommunications services to rural communities is being severely jeopardized by IXC’s illegal “self-help” actions. Already, these illegal actions and the Commission’s failure to take action have prompted several RICA members to postpone or cancel plans of expansion into other rural communities. To ensure that rural CLECs are able to survive and grow, a benchmark approach to rural CLEC access rates that presumes rates at or below the average NECA rate to be just and reasonable is urgently needed.

²⁵ Reply Comments of Rural Independent Competitive Alliance, et al., Request for Emergency Temporary Relief Enjoining AT&T Corp. from Discontinuing Service Pending Final Decision, CC Doc. No. 96-262, Jun. 29, 2000.

Such an exemption, as proposed by RICA, would provide for an administratively straightforward way to establish a presumption of reasonableness for interstate access rates for CLECs that provide quality service to rural America. Accordingly, modern, reliable and efficient telecommunications services would continue to be provided to rural customers as well as expanded to other rural areas, thus serving the public interest. RICA therefore urges the Commission to act promptly in adopting its proposed exemption.

Respectfully submitted,

RURAL INDEPENDENT COMPETITIVE ALLIANCE

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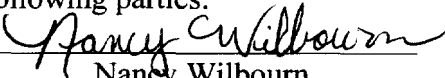
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CERTIFICATE OF SERVICE

I, Nancy Wilbourn, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Reply Comments of the Rural Independent Competitive Alliance" was served on this 11th day of January 2001, via hand delivery or by first class, U.S. mail, postage prepaid to the following parties:


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